

REMARKS/ARGUMENTS

The amendments proposed above were previously presented in an Amendment filed under 37 CFR §1.312, but not entered, pursuant to the Response to Rule 312 Communication dated August 8, 2003 (Paper No. 20). Entry of the claim amendments was refused on the grounds that the proposed amendments (deletion of paragraph no. 3) introduce new matter.

In a subsequent telephone conference, the Examiner stated that new matter was allegedly created since omission of a "step" from a "method," pursuant to MPEP 706.03(o), may be new matter.

With all due respect, the deletion of "method" no. (3) from the independent claims does not introduce new matter into the application. First, independent claims 15, 19, and 26 are not "method" claims. Second, in each of the independent claims, including "method" claims 20, 29 and 32, all that was deleted was one of three alternative test methods for determining phosphate binding capacity of a solid mixed metal compound.

The deletion of the alternative method (3) does not change the meaning of the claim, nor otherwise affects the allowability of the amended claims.

As stated upon submission of the Rule 312 Amendment, the test method (3) for measuring phosphate binding capacity may not be sufficiently precise to provide a meaningful test. For example, the test results could vary depending on the manufacture of, *e.g.*, cornflakes (considered to be a major source of phosphate), marmite, etc. Therefore, to avoid any potential ambiguity in the scope of the test procedure, and recognizing that the test methods (1) or (2) provide a more precise test, the present amendments delete test method (3). The breadth of the claims is not expanded by the deletion and no new matter is introduced by the clarifying claim language.

An Information Disclosure Statement is also being filed concurrently herewith.

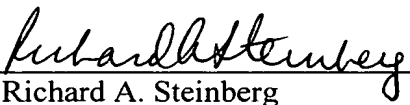
Accordingly, entry of the amendments and allowance of this application is respectfully requested.

Therefore, all objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited.

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicants at the telephone number indicated below in order to expeditiously resolve any remaining issues.

Respectfully submitted,

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Information Disclosure Statement